

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., NUCAP US	:	J.D. WATERBURY
INC., as successor to ANSTRO	:	
MANUFACTURING, INC.;	:	AT WATERBURY
	:	
Plaintiffs,	:	SEPTEMBER 21, 2016
	:	
VS.	:	
	:	
PREFERRED TOOL AND DIE, INC.,	:	
PREFERRED AUTOMOTIVE	:	
COMPONENTS, a division of PREFERRED	:	
TOOL AND DIE; and ROBERT A. BOSCO,	:	
JR.,	:	
	:	
Defendants.	:	

**PLAINTIFFS' MOTION FOR AN ORDER OF COMPLIANCE TO PREFERRED TO
RESPOND TO PLAINTIFF'S THIRD REQUESTS FOR PRODUCTION**

Plaintiffs, Nucap Industries Inc. ("Nucap Industries") and Nucap US Inc., as the successor to Anstro Manufacturing ("Nucap US") (collectively "Plaintiffs" or "Nucap"), respectfully file this Motion for an Order of Compliance to Defendants, Preferred Tool and Die, Inc. ("Preferred Tool") and Preferred Automotive Components, a division of Preferred Tool and Die ("Preferred Automotive") (collectively, "Preferred"), to produce documents responsive to the Plaintiffs' Third Requests for Production and relevant to Preferred's tooling and manufacture of brake shims.

1. This action is against Preferred and Robert A. Bosco, Jr. ("Bosco") for misappropriation of Plaintiffs' trade secrets and proprietary product design and manufacturing information.

2. After Preferred—a company with no prior experience in the brake industry—either hired or associated itself with several former employees of Plaintiffs, it quickly "came to

market” with a line of automotive brake products that had a striking resemblance to products manufactured and designed by Plaintiffs.

3. One such Preferred employee (and former employee of an affiliate of Plaintiffs) even began marketing Preferred’s brake shim products by touting his experience with Plaintiffs and referencing information relating to its current supplier (Plaintiffs), that Preferred could potentially share with the customer.

4. Preferred also hired a former employee of Plaintiffs with experience in the manufacturing of Plaintiffs’ brake parts, namely shims, through a process referred as “tooling.”

5. A product cannot be manufactured without going through the tool and die process.

6. It quickly became clear to Plaintiffs what was happening: Preferred had raided Plaintiffs’ proprietary information by hiring away a group of Plaintiffs’ employees and then benefitted (without authorization) from the trade secret, confidential, and proprietary information belonging to Plaintiffs in the design, development, manufacturing, and marketing of Preferred’s brake components.

7. Notwithstanding the fact that this case involves claims of misappropriation of Plaintiffs’ manufacturing processes and confidential information relating to the tooling designs for brake shims, Preferred has refused to provide any discovery concerning its manufacturing and the tooling processes used by Preferred for manufacturing brake components.

8. Those claims are alleged in Plaintiffs’ Complaint and have been further developed through discovery and depositions. *See* Compl. at ¶¶ 64-71 (raising misappropriation claims relating to manufacturing processes); Dambrauskas Dep. Tr. at 26:11-27:18, 54:17-21, 103:15-21, attached to Memorandum of Law as Ex. B.

9. Preferred's unjustified refusal to provide this core information turns the rules of discovery on their head and would require Plaintiffs to fully prove an allegation in the Complaint before discovery was permissible, while simultaneously denying Plaintiffs the discovery necessary to fully explore and develop its tooling misappropriation claims.

10. Specifically, Preferred wholesale objected to producing any documents in response to the following document requests issued by Nucap:

- All documents reflecting prints of Tooling designs, including assembly prints, for any brake shims manufactured by Preferred from January 1, 2013 to the present. Third Request for Production No. 2;
- All communications between Reynolds and any owner, principal, employee, agent or representative or agent of Preferred, concerning the design of any Tooling for all brake shims manufactured by Preferred from January 1, 2013 to the present. Third Request for Production No. 5.

11. In objecting to Requests No. 2 and 5 in their entirety, Preferred has taken the inexplicable position, belied by the allegations in the Complaint and record developed to-date in discovery, that tooling design is not relevant to any claim in this action and that the information is not discoverable on the purported basis that Nucap "[has] not specifically alleged that any tooling designs were misappropriated from Plaintiffs, nor has any evidence come forth since this case was filed in July 2014 to support such an allegation being made in good faith" Preferred Responses and Objections to Plaintiffs' Third Requests for Production, at Nos. 2 and 5, attached as Exhibit E to Memorandum of Law.

12. Preferred further objected to the discovery of these materials on the basis that they were confidential and highly sensitive business documents of Preferred, despite the Court's entry of a two-tiered Protective Order providing for both "Confidential" and "Attorneys' Eyes Only" designations. *Id.* ("Defendant also objects to this request to the extent that any answer will likely contain highly confidential information which is proprietary to Defendant.").

13. Nucap's attempts to meet and confer with Preferred on this issue have resulted in Preferred's steadfast refusal to produce any documents concerning its tooling designs for its brake shim product line.¹

14. The scope of discovery in Connecticut is broad and favors the liberal disclosure of information. Under Practice Book § 13-2, "a party . . . may obtain . . . discovery of information or disclosure, production and inspection of papers, books or documents material to the subject matter involved in the pending action, which are not privileged."

15. Further, "[d]iscovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure." *Id.*

16. "Information material to the subject matter of a lawsuit certainly includes a broader spectrum of data than that which is material to the precise issues raised in the pleadings." *Lougee v. Grinnell*, 582 A.2d 456 (Conn. 1990), *overruled in part on other grounds by State v. Salmon*, 735 A.2d 333 (1999) (en banc); *see also Delprete v. Senibaldi*, No. CV-11-6024795-S, 2014 Conn. Super. LEXIS 1421, at *6 (Conn. Super. Ct. June 10, 2014) (reciting general rule that Connecticut "has traditionally permitted liberal discovery of information including a broader spectrum of data than which is material to the precise issues raised in the pleadings").

17. Here, the Court should order Preferred to provide discovery on its tooling designs for all shim products manufactured by Preferred, including internal communications involving Mr. Reynolds (Plaintiffs' former tool designer, and the lead tool and die designer at Preferred),

¹ The parties engaged in several rounds of meet and confer discussions, both through written correspondence and in telephone calls, concerning this discovery and the documents at issue through this Motion. *See. e.g.*, Exhibits F and G to Memorandum of Law.

concerning Preferred's tooling design. Nucap's Complaint and the allegations against Preferred directly implicate product design and the manufacturing process by claiming that Preferred has benefited in "coming to market" with its own line of shims by improperly trading on Nucap's design and manufacturing know how. Compl. at ¶¶ 56-57, 64-71.

18. There is no reasoned justification for Preferred's relevance objections to the production of any tooling drawings, which deprive Nucap of the other half of the picture on Preferred's manufacturing processes.

19. Without access to Preferred's tooling design documents, Nucap has no way of fully exploring its claims of manufacturing misappropriation and neither party has the ability to fully explore the respective validity of their claims and defenses.

20. For the parties, the Court, and the jury to fully determine whether Preferred misappropriated Nucap's tooling design and manufacturing processes, Nucap needs to first obtain discovery on the manufacturing processes and tooling designs utilized by Preferred for its products.

21. Likewise, Mr. Reynolds' communications on tooling design, including the way in which Mr. Reynolds went about designing tools for Preferred's shims product line, will shed light on the ultimate issue of whether and to what extent Preferred used Nucap's internal and confidential tooling design processes to make its own products.

22. Accordingly, all of these documents are discoverable and should be produced.

For the foregoing reasons, and those stated in the supporting Memorandum of Law, Plaintiffs respectfully request the Court grant Plaintiffs' Motion for Compliance and enter an order in the form attached.

PLAINTIFFS,
NUCAP INDUSTRIES, INC. and NUCAP US,
INC.

By /s/ Stephen W. Aronson

Stephen W. Aronson
Email: saronson@rc.com
ROBINSON & COLE LLP
280 Trumbull Street
Hartford, CT 06103
Tel. No. (860) 275-8200
Fax No. (860) 275-8299
Juris No. 50604

DUANE MORRIS LLP
Lawrence H. Pockers
(*Pro Hac Vice*)
Harry M. Byrne
(*Pro Hac Vice*)
30 South 17th Street
Philadelphia, PA 19103
Telephone: 215.979.1000
Fax: 215.979.1020
LHPockers@duanemorris.com
HMByrne@duanemorris.com

Attorneys for Plaintiff

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 21st day of September 2016 to all counsel and self-represented parties of record, as follows:

Stephen J. Curley, Esq.
The Law Offices of Stephen J. Curley, LLC
One Atlantic Street, Suite 604
Stamford, CT 06901
scurley@earthlink.net

David A. DeBassio, Esq.
Hinckley Allen & Snyder LLP
20 Church Street
Hartford, CT 06103
ddebassio@haslaw.com

Gene S. Winter, Esq.
Benjamin Lehberger, Esq.
St. Onge Steward Johnston & Reens
986 Bedford Street
Stamford, CT 06906
gwinter@ssjr.com

/s/Stephen W. Aronson

Stephen W. Aronson